his discretion grant notification of or access to a record in a system of records which is exempt under paragraph (b) of this section. Discretionary notification of or access to a record in accordance with this paragraph will not be a precedent for discretionary notification of or access to a similar or related record and will not obligate the responsible Department official to exercise his discretion to grant notification of or access to any other record in a system of records which is exempt under paragraph (b) of this section.

[40 FR 47409, Oct. 8, 1975, as amended at 43 FR 40229, Sept. 11, 1978; 47 FR 57040, Dec. 22, 1982; 49 FR 14108, Apr. 10, 1984; 51 FR 41352, Nov. 14, 1986; 59 FR 36717, July 19, 1994; 65 FR 34988, June 1, 2000; 65 FR 37289, June 14, 2000; 68 FR 62751, Nov. 6, 2003]

EFFECTIVE DATE NOTE: At 73 FR 55775, Sept. 26, 2008, § 5b.11 was amended by adding paragraphs (b)(2)(ii)(H), (I), (J), and (K), effective Oct. 27, 2008. For the convenience of the user, the added text is set forth as follows:

### § 5b.11   Exempt Systems

\*       \*       \*       \*       \*

(b) * * *

(2) * * *

(ii) * * *

(H) Investigative materials compiled for law enforcement purposes from the CMS Fraud Investigation Database (FID), HHS/CMS.

(I) Investigative materials compiled for law enforcement purposes from the Automated Survey Processing Environment (ASPEN) Complaints/ Incidents Tracking System (ACTS), HHS/CMS.

(J) Investigative materials compiled for law enforcement purposes from the Health Insurance Portability and Accountability Act (HIPAA) Information Tracking System (HITS), HHS/CMS.

(K) Investigative materials compiled for law enforcement purposes from the Organ Procurement Organizations System (OPOS), HHS/CMS.

\*       \*       \*       \*       \*

### § 5b.12   Contractors.

(a) All contracts entered into on or after September 27, 1975 which require a contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function must contain a provision requiring the contractor to comply with the Act and this part.

(b) All unexpired contracts entered into prior to September 27, 1975 which require the contractor to maintain or on behalf of the Department to maintain, a system of records to accomplish a Department function will be amended as soon as practicable to include a provision requiring the contractor to comply with the Act and this part. All such contracts must be so amended by July 1, 1976 unless for good cause the appeal authority identified in § 5b.8 of this part authorizes the continuation of the contract without amendment beyond that date.

(c) A contractor and any employee of such contractor shall be considered employees of the Department only for the purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i), and the employee standards of conduct listed in Appendix A of this part where the contract contains a provision requiring the contractor to comply with the Act and this part.

(d) This section does not apply to systems of records maintained by a contractor as a result of his management discretion, *e.g.*, the contractor's personnel records.

### § 5b.13   Fees.

(a) *Policy.* Where applicable, fees for copying records will be charged in accordance with the schedule set forth in this section. Fees may only be charged where an individual requests that a copy be made of the record to which he is granted access. No fee may be charged for making a search of the system of records whether the search is manual, mechanical, or electronic. Where a copy of the record must be made in order to provide access to the record (*e.g.*, computer printout where no screen reading is available), the copy will be made available to the individual without cost. Where a medical record is made available to a representative designated by the individual or to a physician or health professional designated by a parent or guardian under § 5b.6 of this part, no fee will be charged.

(b) *Fee schedule.* The fee schedule for the Department is as follows: